

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION**

<b>NANCY MCHUGH,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 5:02cv00106</b>
	)	
<b>v.</b>	)	<b><u>Memorandum Opinion</u></b>
	)	
<b>CHECK INVESTORS, INC., a/k/a</b>	)	
<b>NATIONAL CHECK CONTROL,</b>	)	<b>By: Samuel G. Wilson</b>
	)	<b>Chief United States District Judge</b>
<b>Defendant.</b>	)	

McHugh brings this action against Check Investors, Inc. (“Check Investors” or “the Company”) pursuant to the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, and asserting a supplemental state law claim for the intentional infliction of emotional distress.

McHugh alleges that Check Investors sent her a dunning letter demanding immediate payment of a debt, which she had already paid, and then during a telephone call, threatened her immediate arrest if she did not remit payment within one hour. Check Investors failed to enter an appearance in this case, and the clerk of court entered Check Investor’s default on February 28, 2003 under Fed. R. Civ. P. 55(a). The court held a hearing on damages and memorializes its findings and its award in this opinion.

**I.**

On Saturday, August 17, 2002, McHugh received a letter from Check Investors, attempting to collect an alleged debt of \$148.78. (Exh. A to Compl.) The letter informed McHugh that she had “ignored previous demands to make restitution for dishonored checks fraudulently issued” to Stop In Food Stores, Inc.; and therefore, her case was “being reviewed to determine if criminal prosecution” would be “recommended.” (Id.). The letter also stated that

“immediate payment [was] required to close” the matter and strongly advised her to take advantage of this “final opportunity.” (Id.). McHugh had never received a notice or request for payment from Check Investors before this date. (Hr’g Tr. at 3).

The letter gave McHugh a number to call. (Id.). She called the number that same day but only a recording answered. (Hr’g Tr. at 3-4). She called again on Monday, August 19 and left her name and number with a representative who stated that someone would contact her. (Id.; Compl. ¶ 9). Later that day, an agent returned McHugh’s phone call and explained that one of McHugh’s checks, numbered 1749, written in July 1998, had been turned over to Check Investors by Telecheck, a check guarantee service, for criminal prosecution. (Hr’g Tr. at 6; Compl. ¶9). The agent held himself out as an attorney at law. (Compl. ¶9).

McHugh first asked for a copy of the check so that she could verify that it was hers. (Hr’g Tr. at 6). He told her he was under no obligation to do so and that the debt had already been verified. (Id. at 6-7). McHugh responded that she was “not trying to run” from the debt but only wanted to make sure it was hers. The agent “became very angry, belligerent,” (Compl. ¶10), and told her that she was trying to run and that “we don’t want your money, have fun in jail.” (Hr’g Tr. at 7). He told her that if she did not pay within the hour, she would face six months in jail and, if she was on good behavior, maybe only two months. (Hr’g Tr. at 7; Compl ¶10). The agent then asked McHugh the number of doorways in her home, how many people lived there, whether McHugh lived with a child, where she slept, and the number of bedrooms. (Hr’g Tr. At 7). McHugh answered the questions but asked why he needed this information. The agent responded that he needed to let the authorities know about any problems to anticipate so that the authorities could arrest McHugh without resistance. (Id.; Compl. 11). After further discussion,

the agent eventually agreed to permit McHugh until 5:00 pm that day to remit payment. (Id. at ¶11).

McHugh was scared and believed she would be criminally prosecuted and arrested at any time. (Hr’g Tr. at 7-8, 11). She worried about the care of her six-year-old daughter if she were indeed arrested and what her child would do or think if she witnessed McHugh’s arrest or came home to find her mother was not there. (Id. at 8, 10).

McHugh called her mother immediately after the conversation. (Hr’g Tr. at 8). Her mother testified that McHugh was hysterical and crying. (Hr’g Tr. at 12). McHugh was so upset that at first her mother could not understand what had happened and thought her granddaughter had been hurt. (Id. at 12-13). McHugh eventually told her about the letter and the telephone conversation. (Id.). McHugh was terrified and stated that the agent told her the matter was very serious. (Id.). According to her mother , McHugh expressed “the same panic that she had” during a house fire where her brother was trapped inside. (Id. at 13).

McHugh then looked through her bank statements and saw that the check had indeed bounced, but for only \$16.78. (Hr’g Tr. at 10). She also called the Shenandoah County Courthouse to find out if there were a warrant for her arrest. (Hr’g Tr. at 11). She did not have time to look through the rest of her statements and was so upset that it did not occur to her that she might not actually owe the debt. (Hr’g Tr. at 10-11). She used a credit card to pay the entire amount and wired the money, for a \$16 fee, through Western Union so that the payment would arrive before 5 pm. (Hr’g Tr. 9). She paid a total of \$163. (Id.).

Some time later, McHugh further reviewed her bank statements and discovered that a receipt dated August 28, 1998, in the amount of \$51.78, showed complete payment in satisfaction

of the debt. (Hr'g Tr. at 5, 6). The debt was, in fact, no longer in existence at the time Check Investors sent its letter and returned McHugh's call.

McHugh filed this action on November 8, 2002 claiming the intentional infliction of emotional distress and alleging the following violations of the FDCPA:

- 1) harassing and abusive conduct that threatened "violence or other criminal means" to harm McHugh's "physical person, reputation, or property," § 1692d(1);
- 2) abusive language, § 1692d(2);
- 3) falsely representing "the character, amount and legal status" of the debt, § 1692e(2)(A);
- 4) falsely representing that its agent was an attorney, § 1692e(3);
- 5) falsely representing that nonpayment would result in arrest, § 1692e(4);
- 6) threatening action that could not legally be taken and was not intended to be taken, § 1692e(5);
- 7) falsely representing that McHugh had "committed a crime" in order to disgrace her, § 1692e(7);
- 8) attempting to collect an amount not "expressly authorized by the agreement creating the debt or permitted by law," § 1692f(1);
- 10) using language or symbols, other than its own address, on the envelope sent to McHugh, § 1692f(8); and
- 11) failing to state that McHugh had thirty days within which to validate the debt and to provide written verification in accordance with § 1692g(a).

McHugh demands judgment for \$10,163 in compensatory and statutory damages, \$45,815 in punitive damages, \$8,755 in attorney's fees, and \$235 in costs. The court held a hearing on damages on March 17, 2003 and expressly found that "the conduct was outrageous and hurtful." (Hr'g Tr. at 17). McHugh has also submitted an accounting of her damages and attorney's fees.

The court considers McHugh's damage award below.

## **II.**

### **A. FDCPA Claim**

The FDCPA protects consumers from abusive, deceptive and unfair debt collection practices and ensures that non-abusive debt collectors will not face a competitive disadvantage. 15 U.S.C. § 1692; United States v. Nat'l Fin. Servs. Inc., 98 F.3d 131, 135 (4th Cir. 1996). The FDCPA entitles a successful plaintiff to an award of actual damages, to a statutory award of up to \$1000, and to costs and reasonable attorney's fees. § 1692k(a).

#### **1. McHugh's Actual Damages**

The statute expressly entitles McHugh to her actual damages. § 1692k(a)(1). As part of her actual damages McHugh asks the court to award damages for emotional distress. The Fourth Circuit has not expressly decided whether § 1692k(a)(1) permits such a recovery, although it has noted that "stress resulting from false threats of suit has been recognized as a compensable injury in private suits under the FDCPA." Nat'l Fin. Servs., 98 F.3d at 140 (citing Carrigan v. Cent. Adjustment Bureau, 502 F. Supp. 468 (N.D. Ga. 1980)). Indeed, courts generally allow recovery for emotional distress only where some physical harm or other independent cause of action exists separately from the emotional harm. Doe v. Chao, 306 F.3d 170, 179-181 (4th cir. 2002); Sea-Land Serv., Inc. v. O'Neal, 224 Va. 343 (1982). Whether the statute contemplates damages for emotional distress, however, is immaterial to McHugh's overall recovery because the court will award damages for emotional distress as an element of her damages on her state law claim for intentional infliction of emotional distress.

#### **2. McHugh's Statutory Damages**

In determining the amount of an award under § 1692k(a)(2)(A) the statute directs the court to consider “the frequency and persistence of non-compliance by the debt collector, the nature of such noncompliance, and the extent to which non-compliance was intentional. . . .” The court knows very little about this collection agency’s track record but the facts of this case point strongly to a lawless commercial enterprise.

Usually courts have awarded the maximum statutory amount after finding that the defendants engaged in multiple violations over many years. See Nat’l Fin. Servs., 98 F.3d at 140; Creighton v. Emporia Credit Serv., Inc., 981 F. Supp. 411, 417 (E.D. Va. 1997). The egregious facts of this case, however, distinguish it from the others. Accordingly, the court will award the statutory maximum of \$1000.

### **3. Attorney’s Fees**

The “purpose of attorney’s fees is to encourage attorneys to prosecute cases that vindicate the objectives” of the FDCPA. Dennis v. Columbia Colleton Medical Ctr., Inc., 290 F.3d 639, 652 (4th Cir. 2002). This case meets those objectives. It presents no mere technical violation of the Act. With that precept in mind, the court employs the “lodestar” formula, multiplying the hours reasonably expended by a reasonable hourly rate, in tandem with the factors enumerated in Johnson v. Georgia Highway Express, Inc., 488 F.2d 714, 717-19 (5th Cir. 1974), recognizing that “the most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” Carroll, 53 F.3d at 629-30 (citing Farrar v. Hobby, 506 U.S. 103, 114 (1992)); Dennis, 290 F.3d at 652.

Based on the factors stated above, counsel's fee petition is for the most part reasonable.<sup>1</sup> The court finds that counsel reasonably spent 37.7 hours at a reasonable rate of \$200 per hour and 3.4 hours for an assistant at \$75 per hour.

### **B. Emotional Distress Claim**

Recovery of compensatory damages for the intentional infliction of emotional distress claim requires that the defendant's conduct be so outrageous and intolerable that it offend generally accepted standards of decency and morality. McDermott v. Reynolds, 260 Va. 98, 101 (2000); Baird v. Rose, 192 F.3d 462, 472 (4th Cir.1999). In an action for an intentional tort, the plaintiff may recover punitive as well as compensatory damages. Smith v. Litten, 256 Va. 573, 577 (1998).

Punitive damages, in particular, attempt to penalize the defendant and deter others from engaging in the proscribed behavior. Hamilton Dev. Co. v. Broad Rock Club, Inc., 248 Va. 40, 45 (1994). The plaintiff must show some aggravating circumstance such as malicious intent or conduct that is particularly egregious. Id. An award of punitive damages should bear a reasonable relationship to the amount of compensatory damages claimed, but "[t]here is no rigid standard for measuring punitive damages; the amount of such an award is largely a matter within the discretion of the fact finder." Id. (affirming an award of punitive damages ten times the size of the compensatory award). The Supreme Court recently held that "few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process," but declined "to impose a bright-line ratio which a punitive damages award cannot

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<sup>1</sup>The court reduces the hours counsel spent preparing the complaint from 6.8 hours to 2 hours.

exceed.” State Farm Mut. Auto. Ins. Co. v. Campbell, \_\_ U.S. \_\_, 123 S. Ct. 1513, 1524 (April 7, 2003). The court is mindful of the Supreme Court’s directives in assessing punitive damages against Check Investors.

In this case, Check Investors intentionally panicked McHugh causing her to pay a debt she did not owe. Check Investors, through its overzealous, deceitful collection agent, clearly intended to cause McHugh severe emotional distress, and she in fact experienced severe emotional distress.

#### **IV.**

For the reasons stated, judgment will be entered against Check Investors as follows: for \$1398 on McHugh’s FDCPA claim consisting of the following: (1) actual damages of \$163; (2) statutory damages of \$1000; and (3) costs and expenses of \$235. The court also will award attorney’s fees in the amount of \$7795. Judgment will be entered against Check Investors for \$25,163 on McHugh’s intentional infliction of emotional distress claim consisting of the following: (1) actual damages (including emotional distress) of \$10,163; and punitive damages of \$15,000. Because each award also includes overlapping actual damages for certain out-of-pocket expenditures in the amount of \$163, the total recovery will be adjusted to avoid a double recovery of that amount.

**ENTER** this 21st of May, 2003.

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CHIEF UNITED STATES DISTRICT JUDGE



**IN THE UNITED STATES DISTRICT COURT  
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<b>NANCY MCHUGH,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 5:02cv00106</b>
	)	
<b>v.</b>	)	<b><u>Final Order</u></b>
	)	
<b>CHECK INVESTORS, INC., a/k/a</b>	)	
<b>NATIONAL CHECK CONTROL,</b>	)	<b>By: Samuel G. Wilson</b>
	)	<b>Chief United States District Judge</b>
<b>Defendant.</b>	)	

In accordance with the court's memorandum opinion entered on this date, it is

**ORDERED** and **ADJUDGED** as follows:

- (1) judgment is entered in favor of plaintiff and against defendant in the amount of \$26,398;
- (2) defendant shall pay plaintiff an attorney's fee of \$7795; and
- (3) this case is stricken from the docket of this court.

**ENTER** this 21st of May, 2003.

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CHIEF UNITED STATES DISTRICT JUDGE